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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,300	09/10/2004	Martina Koenig	P179 1190.US	4910

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WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
ATTN: PATENT DOCKETING 32ND FLOOR
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EXAMINER

JACOBSON, MICHELE LYNN

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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11/04/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/507,300

Applicant(s)

KOENIG ET AL.

Examiner

MICHELE JACOBSON

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-15 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-15 and 17-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 11 recites that a component which decreases water solubility further comprises the food casing of claim 9. However, claim 11 fails to recite what the component decreases the water solubility of. It is unclear if the water solubility of the food additive, the casing or the binder is intended to be decreased. For the purpose of examination this limitation will be interpreted to mean that the component decreases the water solubility of the food additive. Appropriate clarification is required.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1, 2, 5-8, 15, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Schafer et al. U.S. Patent No. 6,200,613 (hereafter referred to as Schafer).

1. Schafer teaches a tubular food casing comprising at least one steam and/or gas impermeable outer layer and an absorbent inner layer comprising cotton fibers, cellulose fibers, regenerated cellulose fibers, viscose fibers, fabric or fleece impregnated with coloring and/or flavoring agents useful as a casing for sausage products subjected to cooking or boiling in production. (Col. 2, lines 5-10, 25-28, Col. 4, lines 25-36) The outer barrier layer comprises two polyethylene layers with a polyamide (Nylon) layer disposed in between. (Col. 2, lines 55-58) The barrier casing is recited to be airtight and gastight, especially against steam and oxygen. (Col. 2, lines 58-60) All of the materials for the casing are recited to be laminated together and an adhesive agent is recited to be used. (Col. 3, lines 24-24) The inside polyethylene layer is recited to be advantageously extruded wet onto the already laminated polyamide and outer polyethylene film so that it may function as an adhesive for the inner absorbent layer to be applied to. (Col. 3, lines 29-33) The flavoring agents recited to be useful for the invention are caramel, aromatic extracts, smoke components, liquid smoke, marinades, fruit flavors and other substances allowed under the regulations governing food. (Col. 3, lines 3-7) The inner side of the barrier casing is recited to be coated with the absorbent inner layer which is then coated with flavoring agent by use of a spray tube, liquid bath or bubble coating while the casing is in tubular form indicating that the casing produced is seamless, as it is not recited to undergo a heat sealing step to form a tube as in the example where the flavoring agent is applied when the casing is in flat form. (Col. 3, lines 1-17) The inventive casing is recited to be joined together at the end by a band that is heat sealable. (Col. 3, lines 42-45)

3. Schafer clearly anticipates the multilayer tubular food casing comprising barrier layers having low permeability to water vapor and oxygen made of polyamide and polyolefin and flavor transfer layer comprising a regenerated cellulose or nonwoven fabric interior layer containing liquid smoke that can be used for cooked meat or scalded emulsion sausage as recited in claims 1, 2, 5-8, 15, 18 and 19. Since the layers of the sausage casing recited by Schafer are made of the same materials recited by applicant they are assumed to inherently display the same stuffing caliber recited in claim 2.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4, 12-14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer et al. U.S. Patent No. 6,200,613 (hereafter referred to as Schafer).

6. Schafer teaches what has been recited above but is silent regarding the oxygen and water vapor permeability of the barrier casing, and shirring the sausage casing.

7. Schafer specifically recites that the polyamide and polyethylene barrier layers were selected to be steam and gas impermeable (Col. 2, lines 6-7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have optimized the thickness of the barrier films to achieve whatever level of water and

oxygen permeability that was desired for the application that the casing was to be utilized for. This obvious optimization of a result effective variable would have produced a casing with a water vapor and oxygen permeability the same as that claimed in claims 4 and 17.

8. While Schafer does not explicitly recite that the inventive casing be shirred the examiner takes official notice that it is universally known in the sausage casing art to shirr sausage casing so that they may be more easily filled with sausage. The limitation in claim 12 that the tubular food casing comprise a first and second segment arranged immediately one after the other and the limitation in claim 13 that a portion of the second segment has a non-shirred portion which passed through the first segment and firmly bonded thereto are method limitations that describe the article produced with product-by-process limitations. When given the broadest reasonable interpretation in the sense that these claims define an article the recitation that a first and second segment arranged immediately one after the other can be interpreted to mean that the first and second segments comprise layers arranged immediately one on top of the other. In such a case, upon utilizing the obvious method of shirring the sausage casing disclosed by Schafer with a barrier layer and flavor transfer layer on top of one another, the article produced would be the same as that claimed by applicant in claim 12.

9. The method limitations of claim 13 are interpreted to result in an article that has the interior transfer layer bonded to the exterior barrier layer since claim 13 recites placing the transfer layer on the inside of the barrier layer and bonding it thereto. Schafer recites using polyethylene adhesive to bond the outer barrier layers to the inner

absorbent layer. As such, the casing produced has the inner layer firmly bonded to the outer layer which when such a casing is modified by applying the obvious technique of shirring produces the same invention as is claimed in claim 13.

10. Regarding claim 14: Schafer clearly recites a heat sealable clip for sealing the end of the casing disclosed. The examiner takes official notice that plastic and metal clips are universally known in the sausage casing art to be useful for sealing the ends of sausage casing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used a metal or plastic clip to seal the end of the food casing thus further binding together the barrier and transfer layers of the casing recited by Schafer. This obvious utilization of a technique well known in the art would have produced the invention claimed in claim 14.

11. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer et al. U.S. Patent No. 6,200,613 (hereafter referred to as Schafer) and Ito et al. European Patent Application Publication No. 408164 ((hereafter referred to as Ito).

12. Schafer teaches what has been recited above but is silent regarding disposing a binder with the flavor enhancing material recited.

1. Ito teaches a water-resistant matrix web for use in flavoring sausages with a food flavoring material disposed on it comprising food flavoring material dispersed on a binder material. (Pg. 2, lines 27-30) The water resistant matrix web is recited to be comprised of natural or artificial fiber materials such as polymers of cellulose and other

natural materials (viscose, acetate, etc), polyester, polyamide, polyethylene, polypropylene and viscose coated Manilla paper. (Pg. 2, lines 37-44, 56)

2. The food layer is recited to include herbs, pepper, cheese powder and powders of vegetable extracts. (Pg. 3, lines 8-17) The binder layer for the flavoring material is recited to be comprised of polysaccharides such as starch, modified starch, carboxymethylcellulose and protein such as gelatin. (Pg. 3, lines 22-28) The selection of these materials is recited to result in the food layer being neatly transferred onto the surface of the food disposed in a casing made of such a laminate.

13. Both Ito and Schafer are directed to casing for use in imparting additional flavor to sausages. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized the flavoring material comprising a food additive and binder material in order facilitate transfer onto the food surface of the food disposed in the casing as recited by Ito. This obvious utilization of flavoring layer known in the art would have produced the same invention as claimed in claims 9-11. Since the binder materials recited by Ito are designed to facilitate the transfer of the entire food layer to the sausage being produced it is inherent that these substances would decrease the water solubility of the flavoring materials in the layer, thus meeting the limitations of claim 11.

Response to Arguments

14. Applicant's arguments with respect to claim 1, 2, 4-15 and 17-19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHELE JACOBSON whose telephone number is (571)272-8905. The examiner can normally be reached on Monday-Thursday 8:30 AM-7 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michele L. Jacobson
Examiner /M. J./
Art Unit 1794

/Carol Chaney/
Supervisory Patent Examiner, Art Unit 1794